IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 25563 of 2006(R)

(E.P.NO.207/03 IN OS.233/1999 DATED 15/09/06 of PRL.SUB COURT,TRIVANDRUM)

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PETITIONER:

HASHIM, S/O. ABDUL RAHIMAN,
ANVAR MANZIL, KARAVARAM, PUTHUSSERY MUKKU P.O.,
KALLAMBALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.G.SUDHEER

RESPONDENT:

ABDUL JABBAR SALIM,
POST BOX NO.43012, ABUDABI, U.A.E.,
FROM TC.48/638(1) (MRWA NO.40)
VALIYAPALLI ROAD, MANACAUD,
THIRUVANANTHAPURAM.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.25563/2006 R

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF E.P.NO.207/2003 IN O.S.NO.233/1999 OF THE PRINCIPAL SUB COURT, THIRUVANANTHAPURAM DTD. 20/08/2003.**

EXT.P2: **COPY OF OBJECTION IN O.S.NO.233/1999 FILED BY THE J.D. DTD. 3/08/2004.**

EXT.P3: **COPY OF VALUATION CERTIFICATE ISSUED BY THE TAHSILDAR, THIRUVANANTHAPURAM DTD. 2/02/2005.**

EXT.P4: **COPY OF VALUATION CERTIFICATE ISSUED BY CIVIL ENGINEER, THIRUVANANTHAPURAM.**

EXT.P5; **COPY OF ORDER DTD. 30/03/2005 IN E.P.NO.207/03 IN O.S.233/1999 OF THE PRINCIPAL SUB JUDGE, THIRUVANANTHAPURAM.**

EXT.P6: **COPY OF JUDGMENT DTD. 8/06/2006 IN WP(C) NO.16411 OF 2005 (D) OF THIS HONOURABLE HIGH COURT OF KERALA.**

EXT.P7: **COPY OF VALUATION REPORT ON IMMOVABLE PROPERTIES DTD. 10/06/2006 ISSUED BY CHIEF ENGINEER FORT DEPARTMENT (RETD.).**

EXT.P8; **COPY OF PETITIONER WITH AFFIDAVIT DTD. 25/08/2006 IN E.P.NO.207/2003 IN O.S.NO.233/1999.**

EXT.P9; **COPY OF STATEMENT OF OBJECTION SUBMITTED BY THE PETITIONER IN E.A.NO.1098/06 IN E.P.NO.207/2003 IN O.S.NO.233/1999.**

EXT.P10: **COPY OF AFFIDAVIT FILED BY THE PETITIONER IN E.P.NO.207/2003 IN O.S.NO.233/1999 DTD. 31/08/2006.**

EXT.P11: **COPY OF AFFIDAVIT FILED BY THE PETITIONER IN E.P.NO. 207/2003 IN O.S.NO.233/1999 DTD. 1/09/2006.**

EXT.P12: **COPY OF ORDER IN E.P.NO.207/2003 IN O.S.NO.233/1999 DTD. 15/09/2006 PASSED BY THE PRINCIPAL SUB JUDGE, THIRUVANANTHAPURAM.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.25563 of 2006

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Dated: 12th July, 2007

JUDGMENT

An affidavit has been filed by Mr.K.S.Gopinathan Nair, counsel who appeared before the execution court on behalf of the petitioner. The facts stated in the affidavit are quite convincing. I accept the affidavit and declare that service of notice to the respondent is sufficient.

2. The residential property of the judgment-debtor having a total extent of 10.5 cents together with residential building was attached and attempted to be sold by the petitioner-decree-holder for recovery of decree debt which comes to above Rs.10 lakhs. The respondent-judgment-debtor contended that the property is situated in Manacaud and considering the market value of the property it will suffice if a portion of the property is sold. That contention did not in the first instance find favour with the execution court. The respondent therefore approached this court which passed Ext.P6 judgment. Under Ext.P6 this court relied on the judgment of the Division Bench of this court in **Reji John v. Bhaskaran Nair** (1998(2) KLT 640) and also that the judgment of the Supreme Court in **Balakrishnan v. Malaiyandi Konar** (2006(1) KLT 926) and ruled that Rule 64 of

Order XXI is to be read with Rule 66(2)(a) and that the execution court has got a duty to ensure that only such portion of the property as is necessary for fetching the decree debt alone need be sold. Accordingly, it was directed that the execution court shall make an attempt to sell four cents of property excluding the building for realisation of the decree debt. This court said further that if the sale proceeds is not sufficient to satisfy the entire decree debt, then the entire property can be sold. Ext.P6 significantly has become final. Pursuant to Ext.P6 the execution court relying on an affidavit submitted by the respondent stating that it will be possible to separate 5.062 cents of land from the building situated on his property, considered a valuation report submitted by the Tahsildar and determined the market value of the property at Rs.3 lakhs per cent and accordingly found that it will suffice if 3 ½ cents excluding the building is sold for satisfying the decree debt. Accordingly, the petitioner-decree-holder was directed to obtain a sketch from the Village Officer in respect of the aforesaid 3.50 cents of land with the help of a private surveyor and file a report and plan. The above order is Ext.P12.

3. The learned counsel for the petitioner submits that several

sincere endeavours were made by the petitioner to comply with Ext.P12. But every time the endeavours were defeated by the respondent who would close down the gate of the premises and prevent the petitioner and the private surveyor from entering into the premises for complying with the directions under Ext.P12. Learned counsel complains that when this aspect was brought to the notice of the learned Subordinate Judge, the learned Subordinate Judge insisted on compliance with Ext.P12 and stated that unless Ext.P12 is complied with strictly the execution petition itself will be dismissed. The difficulties experienced by the petitioner in the matter of serving the respondent with notice of this Writ Petition demonstrates the genuineness of the petitioner's grievance to a considerable extent. As already indicated Ext.P6 has attained finality and if it is not possible to sell a portion of the property, it will be open to the petitioner to sell the whole property. After all the prominent ground on which the proposed sale is resisted by the respondent is that a portion of the property will suffice and it is not necessary to sell the whole property. I am of the view that the said ground can be taken note of and the Writ Petition can be disposed of by issuing the following directions:

The respondent is permitted to identify any purchaser of his

choice for purchasing any portion of his property within three months of the petitioner producing a copy of this judgment before the execution court. The petitioner is also permitted to send copy of the judgment by registered post acknowledgement due to Advocate Imtiaz Mohammed who appears for the respondent before the execution court even now. If the respondent identifies such a purchaser he will produce copy of the agreement before the execution court and seek leave of the court for selling the property to the prospective purchaser on the basis of the above agreement. The court below will consider that application and pass appropriate orders so as to ensure that the entire balance decree debt is paid by the prospective purchaser to the petitioner to the credit of the decree debt. If the respondent does not identify such a purchaser and fails to file any application for leave before the court below within the aforesaid period, there will be a direction to the execution court to sell the entire property originally proposed by the petitioner(as already permitted by this court under Ext.P6) for recovery of the decree debt. Ext.P12 will stand set aside in view of the above directions. At any rate the court below will ensure that the entire decree debt is paid off by the petitioner within six months of receiving

copy of this judgment. If it becomes necessary for the court below to conduct sale of the entire property the court below will redetermine the value of the property before final orders on sale are passed after hearing the decree-holder and the judgment-debtor.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**